

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ELPIDIO B. AVILEZ, #1011021

§

VS.

§

CIVIL ACTION NO. 4:18cv77

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

Petitioner Elpidio B. Avilez, a prisoner confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the petition should be dismissed. Petitioner has filed objections.

Petitioner is challenging his Collin County conviction for aggravated sexual assault of a child. On September 18, 2000, he was sentenced to life imprisonment. He previously filed a petition for a writ of habeas corpus in this Court challenging the conviction, which was dismissed with prejudice. *Avilez v. Dretke*, No. 4:05cv144 (E.D. Tex. Oct. 2, 2005). The Fifth Circuit dismissed his appeal. *Avilez v. Dretke*, No. 05-41604 (5th Cir. Jan. 10, 2006). The present petition was filed on January 30, 2018, but Petitioner has not shown that the Fifth Circuit granted him permission to file a second or successive petition. Moreover, a review of the Fifth Circuit's information website reveals that he has not been granted permission to file a second or successive petition. Magistrate Judge Nowak correctly concluded that the petition should be dismissed because Petitioner has not received the permission of the Fifth Circuit to file a second or successive petition. *Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003) (Federal courts lack subject matter jurisdiction to consider a second or successive petition unless the Fifth Circuit has granted the petition permission to file it.).


Petitioner has filed objections, but his objections do not show that he has received permission to file a second or successive petition. His objections are nonresponsive to the reasons given for dismissing the case.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Petitioner to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DISMISSED** without prejudice for lack of subject matter jurisdiction. A certificate of appealability is **DENIED**. All other motions not previously ruled on are hereby **DENIED**. It is finally

ORDERED that the Clerk of Court shall return unfiled any new petitions for a writ of habeas corpus submitted by Petitioner regarding his conviction unless he shows that he has received permission from the Fifth Circuit to file it.

SIGNED this the 2 day of January, 2019.


Thad Heartfield
United States District Judge